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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 MEGAN KELLY,

13 Plaintiff,

14 v.

15 APPLERA CORPORATION,

16 Defendant.

Case No. C-07-3002 MMC

**DECLARATION OF MICHAEL G.  
PEDHIRNEY IN SUPPORT OF SEPARATE  
CASE MANAGEMENT CONFERENCE  
STATEMENT**

[PURSUANT TO THE COURT'S CASE  
MANAGEMENT CONFERENCE ORDER]

Date: September 14, 2007

Time: 10:30 a.m.

Courtroom: 7, 19th Floor

Judge: The Honorable Maxine M.  
Chesney

21  
22 I, MICHAEL G. PEDHIRNEY, HEREBY DECLARE AND STATE AS FOLLOWS:

23 1. I am an attorney at law licensed to practice before all of the courts of the State  
24 of California and this Honorable Court. I am an associate with the law firm of Littler Mendelson,  
25 counsel of record for Defendant in this action.

26 2. I make this declaration pursuant to the Court's August 9, 2007 Case  
27 Management Conference Order which requires that a party submit a declaration in the event that the  
28 parties do not file a joint case management conference statement. I have personal knowledge of the

1 facts set forth below and, if called upon as a witness, I could and would competently testify thereto.

2 3. The Court's Case Management Order set the parties' Case Management  
3 Conference for Friday, September 14, 2007 at 10:30 a.m. The Case Management Order also ordered  
4 counsel to submit a joint case management conference statement not less than seven days before the  
5 conference. In addition, the Order required the parties to submit a signed declaration setting forth  
6 the grounds for failure to submit a joint case management conference statement.

7 4. On Wednesday, September 5, 2007, at about 4:50 p.m., I sent a draft joint case  
8 management conference statement to Plaintiff's counsel, Maureen McFadden, via e-mail. In the e-  
9 mail, I informed Ms. McFadden that the joint case management conference statement was due by  
10 September 7, 2007 under the Court's Order. I requested that Ms. McFadden review the draft joint  
11 case management conference statement and submit any additional information that Plaintiff believed  
12 was relevant. In the e-mail, I invited Ms. McFadden to contact me if she had any questions or  
13 concerns regarding the contents of the draft joint case management conference statement.

14 5. On Thursday, September 6, 2007, at around 10:00 a.m., I received an e-mail  
15 from Ms. McFadden in which she stated that she was working on the joint case management  
16 conference statement. In the e-mail, she expressed her opinion that the draft that Defendant  
17 provided was "argumentative and full of inaccuracies."

18 6. On Thursday, September 6, 2007, at around 3:45 p.m., I received an e-mail  
19 from Ms. McFadden, in which she attached Plaintiff's revised joint case management conference  
20 statement. Later that evening, I reviewed Plaintiff's proposed joint case management conference  
21 statement. Plaintiff made revisions to the draft joint case management conference statement that I  
22 believed were unnecessary. Among other things, I believed that Plaintiff's draft was unduly  
23 argumentative and did not accurately reflect Defendant's position with regard to the parties'  
24 litigation.

25 7. On Friday, September 7, 2007, at around 1 p.m., Tyler Paetkau, Defendant's  
26 lead counsel, and I telephoned Ms. McFadden's office in order to resolve the parties' differences  
27 regarding the joint case management conference statement. No one at Ms. McFadden's office  
28 answered the telephone. Mr. Paetkau left a telephone message for Ms. McFadden and requested that

1 she contact either him or me so that we could discuss the joint case management conference  
2 statement.

3 8. Later that afternoon, at about 2:35 p.m., I e-mailed Ms. McFadden a new draft  
4 of the joint case management conference statement that I believed addressed both parties' concerns  
5 regarding the statement. In the e-mail, I requested that she provide us with her thoughts regarding  
6 the draft by 4:00 p.m. I informed her that if she did not respond by 4:00 p.m., Defendant would  
7 submit its own case management conference statement.

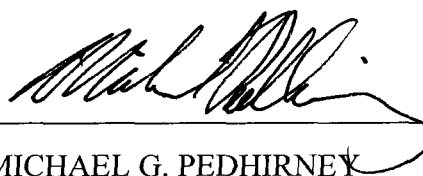
8 9. Within a few minutes after I sent Ms. McFadden the e-mail at 2:35 p.m. on  
9 September 7, I telephoned her office. Once again, no one answered the telephone. I left a voicemail  
10 message reiterating the contents of my earlier e-mail requesting that she respond to our draft by 4:00  
11 p.m.

12 10. As of 4:45 p.m. on Friday, September 7, 2007, I had not heard from Plaintiff's  
13 counsel regarding her thoughts on Defendant's latest draft of the joint case management conference  
14 statement, nor has Mr. Paetkau. In light of the fact that the Court's Case Management Order  
15 requires that the parties submit a case management conference statement no later than seven days  
16 prior to the case management conference, the case management conference is scheduled for Friday,  
17 September 14, 2007 (which is seven days from September 7), and the parties have not reached an  
18 agreement on a mutually acceptable joint case management conference statement as of this time,  
19 Defendant is submitting its own case management conference statement.

20 I declare under penalty of perjury under the laws of the United States of America that  
21 the foregoing is true and correct.

22 Executed this 7th day of September, 2007 at San Francisco, California.

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MICHAEL G. PEDHIRNEY

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